

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

GREGORY PORTER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 4:03CV651-DJS
	)	
DAVE DORMIRE,	)	
	)	
Respondent.	)	

ORDER

Petitioner Gregory Porter seeks habeas corpus relief pursuant to 28 U.S.C. §2254. Now before the Court is the report and recommendation of the United States Magistrate Judge. After appointing petitioner counsel and conducting an evidentiary hearing, the magistrate judge recommends that the habeas petition be denied. Petitioner has filed objections to the report and recommendation, challenging the magistrate judge's rejection of petitioner's testimony at the evidentiary hearing. Pursuant to 28 U.S.C. §636(b), this Court gives *de novo* consideration to those matters to which specific objections are made.

As required by petitioner's objections to the magistrate judge's fact-finding, the Court has reviewed the evidentiary hearing record via the Court's electronic recording system and makes its own findings of fact, independent of the magistrate judge's conclusions. Petitioner's sole ground for relief is that he received ineffective assistance of counsel because his attorney

permitted petitioner to plead guilty while petitioner was incompetent due to the influence of antipsychotic medication. The Court has considered the hearing testimony of petitioner, of the trial counsel, and of a psychiatrist called by the petitioner, as well as the written exhibits filed of record in this case.

The Court finds that petitioner's trial counsel, formerly himself a circuit judge for many years, had no basis for questioning petitioner's competency to proceed on the day of his guilty plea, and specifically that petitioner did not advise counsel that he was mentally unfit to go forward or ask counsel to try to obtain a continuance of the proceedings. Consistent with these findings is the transcript of the plea, at which petitioner answered that there was nothing he had asked of his counsel which counsel had not done, that petitioner was not under the influence of drugs and was not sleepy or drowsy.

The Court concludes that petitioner has not established that his counsel failed to exercise the customary skill and diligence of a reasonably competent attorney in the circumstances. Neither has petitioner shown that the state courts' rejection of the ground for relief here presented resulted in an adjudication permitting habeas corpus relief under the standard of 28 U.S. §2254(d).

Accordingly,

**IT IS HEREBY ORDERED** that petitioner's objections to the magistrate judge's report and recommendation [Doc. #23] are overruled.

**IT IS FURTHER ORDERED** that the magistrate judge's report and recommendation [Doc. #22] is accepted and adopted.

Dated this 26<sup>th</sup> day of September, 2005.

/s/Donald J. Stohr  
UNITED STATES DISTRICT JUDGE